

Serial No.: 09/813,525

1Fw 2641

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Inventors: **Simon D. Boland**

Case No.: **400048-A-01-US (Boland)**

Serial No.: **09/813,525** Group Art Unit: **2641**

Filing Date: **March 21, 2001**

Examiner: **H. Wu / Special Program Examiner: Doris To**

Title: **Voice-Activity Detection Using Energy Ratios and Periodicity**

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Request for Reconsideration of Petition

Dear Sir:

On March 4, 2005, applicant filed a Petition to Withdraw Abandonment Based on Failure to Receive Office Action.

This Petition was denied by Decision on Petition to Withdraw Holding of Abandonment which was mailed on May 27, 2005.

Applicant hereby requests that the Petition be reconsidered, its denial be reversed, and the Petition be granted.

Background

In the Petition, applicant's attorney noted that "Applicant's attorney attests that he has searched the file jacket of the above-identified application and that he has had the Avaya Docket Administrator search the docket records and that these searches indicate that the Office Action was not received". The Petition was denied "due to a lack of a statement from the Practitioner attesting to a personal search of the docket records and indicating that the Office Action was not received."

Applicant requests reconsideration of the Petition and withdrawal of the denial because (1) a personal search of the docket records by the Practitioner is not required by the Patent Office rules, and (2) imposition of such a requirement imposes an undue burden that is contrary to the intent of the current Patent Office practice for reviving applications.

Argument

1. A personal search of the docket records by the practitioner is not required by Patent Office rules.

Both MPEP §711.03(c), and 1156 OG 53 which announced the policy embodied by §711.03(c), state that “The showing required to establish non-receipt of an Office Communication must include a statement that the Office Communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office Communication was not received.” Note that the rule refers to “a search” which could presumably be performed by anyone, and not to “a search by the practitioner”. The plain meaning of this rule is that the practitioner must not have received the Office Communication, but not that the practitioner must personally perform the search that proves non-receipt.

In the Petition, applicant’s attorney has attested to the facts that (a) he has searched the file jacket of the application, (b) he has had the Docket Administrator search the docket records, and (c) these searches indicate that the Office Action was not received. Consequently, applicant’s attorney respectfully asserts that he has met the literal requirements of the rule.

2. Imposing a requirement on practitioner to personally search the docket records imposes an undue burden that is contrary to the intent of the current Patent Office practice for reviving applications.

The policy of MPEP §711.03(c) announced in 1156 OG 53 has as its purpose “a practice that will minimize costs and burdens to the practitioner and the Office when an application has become abandoned due to a failure to receive an Office Action.” 1156 OG 53 (October 25, 1993). This new policy did away with, inter alia, the then-existing requirements for “verified statements from persons who would have handled the Office Action (e.g., mail clerks, docket clerks, secretaries, etc.)” Id.

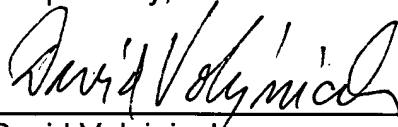
The requirement for a practitioner to personally search the docket records and attest to the results thereof is a regression to the old practice and its costs and burden to the practitioner – precisely what the new practice is intended to avoid. For example, in this case, practitioner is located in Denver, Colorado, while the docket office, including the Docket Administrator and docket records, are located

half a continent away in Lincroft, New Jersey. Requiring the practitioner to personally travel from Colorado to the docketing office in N.J. just to review docketing records – records which the Docketing Administrator is, by virtue of her function, better capable of reviewing and interpreting than the practitioner – is, applicant suggests, precisely the type of cost and burden that the new practice is intended to eliminate. Applicant therefore respectfully asserts that such a requirement is not in keeping with the new practice, and hence should not be imposed.

Conclusion

For the foregoing reasons, applicant requests that its Petition to Withdraw Abandonment Based on Failure to Receive Office Action be reconsidered, its denial be withdrawn, and the Petition be granted.

Respectfully,



David Volejnicek
Reg. No. 29355
Attorney for Applicant

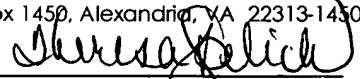
Date: June 22, 2005

Docket Administrator
Avaya Inc.
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Lincroft, NJ 07738

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

On June 22, 2005
Date of Deposit

Theresa Belich
(Type name of person mailing paper)


(Signature of person mailing paper)